

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK MARKHAM, *individually and on
behalf of all others similarly situated,*

Plaintiff,

Case No. 1:19-cv-232

v.

HON. JANET T. NEFF

NATIONAL GEOGRAPHIC
PARTNERS, LLC,

Defendant.

_____ /

ORDER

Pending before the Court is Defendant's Pre-Motion Conference Request (ECF No. 8) in which Defendant proposes a motion to dismiss Plaintiff's claim based on the lack of subject matter jurisdiction/lack of standing/no injury-in-fact and the failure to plead a plausible claim of actual damages, grounds which may in whole or in part be futile based on Plaintiff's Response (ECF No. 11).

Having reviewed the grounds for dismissal in Defendant's Request, and the Response, the Court concludes that it would be an inefficient use of chamber resources to conduct a Pre-Motion Conference on the arguments presented, many of which should be resolved or narrowed by conference and agreement between the parties in light of the cited authority, e.g., *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 443 (6th Cir. 2012); *Horton v. GameStop Corp.*, ___ F. Supp. 3d ___, 2018 WL 8335635 (W.D. Mich. Sept. 28, 2018).

Accordingly, the Court denies Defendant's Request without prejudice and will order the parties to reassess their Pre-Motion Conference arguments to determine those that are viable under the facts and applicable legal authority. The parties shall confer as appropriate to conscientiously

resolve or narrow the disputed issues, after which the parties shall file a Joint Notice, as ordered herein. Following the Joint Notice, the Court will determine an appropriate course of action, e.g., renewed Request, Answer, Status Conference.

Therefore:

IT IS HEREBY ORDERED that the Pre-Motion Conference Request (ECF No. 8) is DENIED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that the parties shall:

- (1) reassess their arguments based on the Pre-Motion Conference filings to determine those that are viable under the facts presented and applicable legal authority;
- (2) confer to conscientiously resolve or narrow the disputed issues raised by each party;
and
- (3) not later than **June 24, 2019** file a **Joint Notice**, setting forth:
 - (a) the case status after conferring, i.e., whether certain issues have been resolved and identifying any issues that remain in dispute;
 - (b) for each issue that remains in dispute, if any, a brief explanation of the parties' positions based on the claim elements/specific legal and factual grounding; and
 - (c) whether the parties remain persuaded that a dispositive motion is appropriate at this time or recommend another course of action.

IT IS FURTHER ORDERED that the time for Defendant to file its answer/responsive pleading is extended until twenty-one (21) days after the Joint Notice.

Dated: June 3, 2019

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge